

**UNITED STATES DISTRICT COURT**

**DISTRICT OF MAINE**

<b>SECOND CHANCE, INC.,</b>	)	
	)	
<b>Plaintiff</b>	)	
	)	
<b>v.</b>	)	<b>Civil No. 02-256-P-C</b>
	)	
<b>MATTHEW L. CHIPMAN, et al.,</b>	)	
	)	
<b>Defendants</b>	)	

**RECOMMENDED DECISION ON PLAINTIFF’S MOTION  
FOR PARTIAL SUMMARY JUDGMENT**

In this admiralty case, plaintiff Second Chance, Inc. (“Second Chance”) moves for summary judgment with respect to the salvage claim of defendant Matthew L. Chipman. *See* Plaintiff’s Motion for Partial Summary Judgment (“Motion”) (Docket No. 18) at 1; Letter dated January 28, 2003 from Matthew Leroy Chipman to Clerk of Courts (“Notice of Claim”) (Docket No. 14). For the reasons that follow, I recommend that the motion be granted.

**I. Summary Judgment Standards**

Summary judgment is appropriate only if the record shows “that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Fed. R. Civ. P. 56(c). “In this regard, ‘material’ means that a contested fact has the potential to change the outcome of the suit under the governing law if the dispute over it is resolved favorably to the nonmovant. By like token, ‘genuine’ means that ‘the evidence about the fact is such that a reasonable jury could resolve the point in favor of the nonmoving party.’” *Navarro v. Pfizer Corp.*, 261 F.3d 90, 93-94 (1st Cir. 2001) (quoting *McCarthy v. Northwest Airlines, Inc.*, 56 F.3d 313, 315 (1st Cir. 1995)).

The party moving for summary judgment must demonstrate an absence of evidence to support the nonmoving party's case. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). In determining whether this burden is met, the court must view the record in the light most favorable to the nonmoving party and give that party the benefit of all reasonable inferences in its favor. *Nicolo v. Philip Morris, Inc.*, 201 F.3d 29, 33 (1st Cir. 2000). Once the moving party has made a preliminary showing that no genuine issue of material fact exists, the nonmovant must "produce specific facts, in suitable evidentiary form, to establish the presence of a trialworthy issue." *Triangle Trading Co. v. Robroy Indus., Inc.*, 200 F.3d 1, 2 (1st Cir. 1999) (citation and internal punctuation omitted); Fed. R. Civ. P. 56(e). "As to any essential factual element of its claim on which the nonmovant would bear the burden of proof at trial, its failure to come forward with sufficient evidence to generate a trialworthy issue warrants summary judgment to the moving party." *In re Spigel*, 260 F.3d 27, 31 (1st Cir. 2001) (citation and internal punctuation omitted).

## **II. Factual Context**

In accordance with Local Rule 56(b), Second Chance filed a statement of material facts in support of its motion for partial summary judgment. *See* Plaintiff's Statement of Material Facts ("Plaintiff's SMF") (Docket No. 19). Chipman having filed no responsive statement of material facts, the following statements by Second Chance relevant to the pending motion, which are properly supported by record citations, are deemed admitted in accordance with Local Rule 56(e):

Second Chance is a corporation duly organized and existing pursuant to the laws of the state of Maine and is the legal owner of the M/V SECOND CHANCE O.N. 930902 ("Vessel"). Plaintiff's SMF ¶ 1; Plaintiff's Verified Amended Complaint ("Complaint") (Docket No. 6) ¶ 1. Chipman resides at Hallowell Road in Pownal, Maine. Plaintiff's SMF ¶ 2; Defendant's [sic] Answer to Complaint ("Answer") (Docket No. 13) ¶ 2.

The Vessel is a documented vessel of the United States of America bearing official number 930902 with a homeport of Kennebunkport, Maine. Plaintiff's SMF ¶ 3; Complaint ¶ 3. The abstract of title for the Vessel discloses that Chipman filed a notice of claim of lien ("NOCL") dated March 23, 1993. Plaintiff's SMF ¶ 4; Complaint ¶ 5. The claim arises out of purported salvage services alleged to have been performed by Chipman prior to the date of the filing of the notice. *Id.* The NOCL was received for record on April 29, 1993 and recorded at Book L-3, Page 004, nearly ten years ago. *Id.*

Chipman has not taken any steps toward enforcing this claimed lien or given notification of any intent to do so since the time he filed the lien. Plaintiff's SMF ¶ 5; Complaint ¶ 7. Second Chance has enjoyed quiet use and possession of the Vessel, and has operated it out of the port of Kennebunkport, Maine, throughout this time period. *Id.*<sup>1</sup>

### III. Analysis

Second Chance seeks summary judgment with respect to the Chipman salvage claim on the basis that it is time-barred pursuant to the applicable statute of limitations, 46 U.S.C. app. § 730, or the doctrine of laches. *See* Motion at [4]-[5]. I agree that section 730 bars the claim.

Section 730 provides, in its entirety:

A suit for the recovery of remuneration for rendering assistance or salvage services shall not be maintainable if brought later than two years from the date when such assistance or salvage was rendered, unless the court in which the suit is brought shall be satisfied that during such period there had not been any reasonable opportunity of arresting the assisted or salvaged vessel within the jurisdiction of the court or within the territorial waters of the country in which the libellant resides or has his principal place of business.

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<sup>1</sup> The Vessel assumedly has been sold since the instant motion was filed. On February 18, 2003 the court granted a motion by Second Chance to clear title to the Vessel upon deposit into the court's registry of the amount of \$10,000, permitting the sale to proceed pending resolution of the dispute over Chipman's salvage claim via the instant motion. *See* Plaintiff's Motion for Order To Establish Title to, and Releasing, Vessel Upon the Posting of Security (Docket No. 16); Order on Plaintiff's Motion To Establish Title to Vessel, and Releasing Vessel Upon Posting of Security (Docket No. 23).

46 U.S.C. app. § 730.

It is undisputed that no suit has been brought on Chipman's claim in the approximately ten years since the salvage services in question were performed, and that the Vessel has remained in its homeport of Kennebunkport, amenable to arrest within the jurisdiction of this court, throughout that time. Thus, the single circumstance prescribed under the statute for tolling of its operation is absent in this case. Nor is there any basis for its equitable tolling. *Compare, e.g., Platoro Ltd., Inc. v. Unidentified Remains of Vessel*, 614 F.2d 1051, 1054 (5th Cir.), *reh'g denied*, 617 F.2d 295 (5th Cir. 1980) (equitably tolling section 730 when plaintiff had mistakenly, but not unreasonably, promptly filed suit in wrong district, thus demonstrating "proper diligence on the part of the plaintiff which such statutes of limitation were intended to insure") (citation and internal quotation marks omitted); *Smit Americas, Inc. v. M/T HOBBY*, No. 01-CV1085, 2001 A.M.C. 1456, 2001 WL 874772, at \*1, \*5 (E.D. Pa. Mar. 13, 2001) (refusing to equitably toll section 730 in case in which, during five-year pendency of plaintiff's *in rem* suit for salvage services, plaintiff had not perfected service of process upon vessel, sought extension of time in which to do so or sought transfer to another district to enable it to do so; noting that equitable tolling of statute appropriate when a plaintiff has diligently advanced his claim).

Chipman argues that (i) he filed a properly executed lien within two years of the date of salvage, (ii) he believed a maritime lien remained attached to a vessel from owner to owner, regardless of resale, (iii) where a claim is timely filed but never adjudicated, it remains open and pending until an order is issued, (iv) he timely filed the instant claim in this quiet-title action, (v) he has seen no reasonable opportunity until the present to pursue the Vessel, (vi) the Vessel's name and ownership have changed since he filed his NOCL, and (vii) the Vessel has not been operating as a

fishing vessel or in Casco Bay, although it has been operated for profit. *See* Defendant’s Statement of Facts for Not Dismissing Salvage Claim (Docket No. 29) at [2].

With respect to the first four points, Chipman misunderstands the applicable statute of limitations, which requires the filing of a suit (not merely the attachment of a lien) within two years of the rendering of salvage services. If a provider of salvage services has not commenced suit within that two-year window, a vessel owner, such as Second Chance, may raise the salvor’s failure to do so as a defense to a claim filed by the salvor in an action by the vessel owner to quiet title. That defense may be raised regardless whether the salvor has timely filed a claim in the action to quiet title (an entirely separate timeliness issue) or whether the salvor’s lien has remained pending for a number of years previously.

With respect to the final three points, Chipman offers no evidence that the Vessel has changed its name or ownership and has not been operating as a fishing vessel or operating in Casco Bay. However, even if he had done so, that evidence would not have contradicted Second Chance’s evidence that the Vessel operated at all relevant times in its homeport of Kennebunkport. Chipman therefore had a “reasonable opportunity,” in the sense contemplated by section 730, to bring suit related to his salvage work on the Vessel.

Second Chance accordingly is entitled to summary judgment, as requested, with respect to Chipman’s claim for salvage services rendered to the Vessel.

#### **IV. Conclusion**

For the foregoing reasons, I recommend that Second Chance's motion for partial summary judgment be **GRANTED**. If this recommended decision is adopted, the court should order the release to Second Chance of the \$10,000 currently held in escrow.<sup>2</sup>

**NOTICE**

*A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which de novo review by the district court is sought, together with a supporting memorandum, within ten (10) days after being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.*

*Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court's order.*

Dated this 14th day of April, 2003.

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David M. Cohen  
United States Magistrate Judge

**Plaintiff**

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**SECOND CHANCE INC**

represented by **WILLIAM H. WELTE**  
**WELTE & WELTE, P.A.**  
13 WOOD STREET  
CAMDEN, ME 04843-2248  
207-236-7786  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

V.

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<sup>2</sup> Adoption of this recommended decision would effectively adjudicate Counts I and II of the Complaint, leaving only Count III (which seeks punitive damages). See generally Complaint. Chipman's answer to the Complaint arguably incorporates a counterclaim seeking (i) restitution for the salvage work performed, (ii) reimbursement for his attorney fee for filing the NOCL in 1993 and (iii) compensation for threats made by plaintiff's attorney William Welte and Dwight Raymond, a principal of the plaintiff, see Affidavit of Dwight Raymond (Docket No. 2) ¶ 1, in the three months prior to filing of Chipman's answer. See Answer at 2; see also Plaintiff's Answer to Claimant's Counter Claim (Docket No. 20). Adoption of this recommended decision would effectively dispose of the first two of Chipman's arguable counterclaims. The third arguable counterclaim is brought against persons who are not parties to the instant suit and thus, should be dismissed by the court *sua sponte*.

**Defendant**

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**MATTHEW L CHIPMAN**

represented by **MATTHEW L CHIPMAN**  
112 HALLOWELL ROAD  
POWNAL, ME 04069  
PRO SE

**Defaulted Party**

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**SECOND CHANCE M/V, *In Rem***

**Counter Claimant**

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**MATTHEW L CHIPMAN**

represented by **MATTHEW L CHIPMAN**  
112 HALLOWELL ROAD  
POWNAL, ME 04069  
PRO SE

(See above for address)

V.

**Counter Defendant**

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**SECOND CHANCE INC**

represented by **WILLIAM H. WELTE**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Claimant**

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**MATTHEW L CHIPMAN**

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